

## Supreme Court Limits NEPA Reviews

By Kenneth J. Warren\*

On May 29, 2025, the United States Supreme Court issued its opinion in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, No. 23-975, affording federal agencies broad discretion to limit their examination of the indirect environmental effects of their actions. The Court held that the National Environmental Policy Act (NEPA) does not require federal agencies to evaluate the environmental effects of projects that are geographically and temporally distinct from the agency's project or action, even if these indirect effects are a foreseeable outgrowth of the agency's project. The Court also emphasized that federal courts reviewing an agency's compliance with NEPA must give substantial deference to the decisions of the agency.

The Court's express objective in limiting the scope of NEPA review is to speed the construction and operation of infrastructure projects that are being delayed by preparation of lengthy environmental impact statements (EIS) and subsequent litigation over the adequacy of the EIS. The Court's opinion notes disapprovingly the prevalent use of NEPA challenges to delay or stop infrastructure projects. This tactic slows projects, increases project costs, and decreases the number of projects and the resulting economic benefits, including jobs. The Court intends its *Seven County* opinion to correct this perceived abuse.

Congress enacted NEPA in 1969 to ensure that federal agencies consider the environmental effects of major federal actions that they plan to undertake, fund, or approve. NEPA recognizes the "profound impact" of human activities on the natural environment. Congress sought to preserve and enhance the environment by requiring federal agencies to examine the adverse environmental effects of their major actions that significantly affect the environment and to consider less impactful alternatives.

A cornerstone of the NEPA process is the EIS, a “detailed statement” reviewing the project’s environmental impacts. When preparing an EIS, the agency must identify significant environmental impacts, feasible alternatives, and measures to mitigate the project’s environmental effects. But unlike later-enacted statutes such as the Clean Water Act, Clean Air Act, and Resource, Conservation, and Recovery Act, NEPA is a procedural statute that imposes no substantive obligation on the agency. Based upon the EIS, the agency may reject the project under consideration, select an alternative that minimizes environmental impact or includes mitigation measures, or determine to proceed notwithstanding environmental concerns.

Ultimately, however, the Administrative Procedure Act allows an aggrieved person to challenge a federal action that was arbitrary, capricious or contrary to law. In some circumstances, the failure to perform an adequate EIS or to reasonably consider the EIS’s findings may provide a basis for determining that the agency decision was not reasonably explained or was otherwise arbitrary. That was the dispute in *Seven County*.

In *Seven County*, a Colorado county and several environmental organizations alleged that the U.S. Surface Transportation Board failed to adequately evaluate the significant environmental effects of a project to construct and operate an approximately 88-mile railroad line connecting Utah’s Uinta Basin to the national freight rail network. The railway was designed to transport crude oil from the Basin to refineries along the Gulf Coast. After conducting six public meetings and evaluating over 1900 comments, the Board issued a 3600-page EIS that analyzed multiple anticipated environmental impacts from the project, such as the effect on wetlands. The report also examined feasible alternatives such as alternative railway routes. After considering the EIS, the Board approved the proposed project, determining that project’s transportation and economic benefits outweighed its environmental impacts.

The EIS acknowledged that once the railway become operational, increased upstream oil drilling in the Uinta Basin and increased downstream refining of crude oil along the Gulf Coast of Louisiana and Texas may occur. Drilling and refining activity would in turn produce additional adverse environmental effects, including emission of greenhouse gases that contribute to climate change. Nevertheless, the Board declined to examine in detail effects from energy projects over which it had no jurisdiction and that were distinct from the railway project geographically and temporally.

The Court of Appeals determined that NEPA required the Board to perform a full analysis of potential environmental harms from upstream and downstream activity and vacated the EIS and the Board's approval of the railway. The Supreme Court reversed. The Court chastised the Court of Appeals for failing to give broad discretion to the Board to determine which environmental impacts to examine.

At first blush, emphasizing agency discretion appears to conflict with the Court's decision last term in *Loper Bright Enterprises v. Raimondo* affirming the role of federal courts to determine the best interpretation of a statute. But in the *Seven County* Court's view, decisions on how to conduct an EIS are not primarily questions of statutory interpretation or of law. Rather, they involve scientific and predictive judgments that depend on facts, context, and policy. Courts must give agencies broad latitude to reasonably draw a "manageable line" when deciding whether to evaluate environmental impacts from projects that are separate in time or place from the project at hand.

The Court also held that NEPA does not require the Board to examine the environmental effects of upstream and downstream projects that will be undertaken because of the availability of new rail transportation. The Court acknowledged that NEPA requires an agency to examine

the environmental effects of its project, even if the effects extend beyond the location of the project itself. But third-party projects separate in location and time that are an outgrowth of the project need not be encompassed within this review.

Borrowing from tort law, the Court stated that a separate project, such as a project serviced by the infrastructure requiring agency review and approval, breaks the chain of proximate causation between the project at hand and the foreseeable environmental effects of the separate project. In addition, an agency cannot be considered the “cause” of the environmental effects of projects over which it has no regulatory authority. Here the upstream and downstream energy projects, although an outgrowth of the railway, were separate from the railway project and outside the Board’s jurisdiction. The Board thus had no obligation to examine the contribution of the railway to emissions or climate change along the Gulf Coast, regardless whether the emissions “are in some sense foreseeable.” The Court further noted that at times even an inadequate EIS may not render the project approval arbitrary or warrant vacating the approval.

In a concurring opinion joined by Justices Kagan and Jackson, Justice Sotomayor emphasized that the Board lacked statutory authority to deny project approval based upon harms resulting from use of the products transported by the railway. The Board was thus not required to evaluate these potential harms. Although the information would still be of interest to the public, NEPA does not mandate expenditure of resources to draft an EIS that cannot guide agency action.

Although the *Seven County* decision will assist project developers, from the viewpoint of climate advocates, it is a mixed bag. On the one hand, the Court curtailed the effectiveness of NEPA in bringing a project’s foreseeable greenhouse gas emissions to the attention of agencies

and the public. *See* White House Council on Environmental Quality (CEQ) interim NEPA Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, January 9, 2023 (emphasizing the importance of examining climate effects). The *Seven County* decision, coupled with the withdrawal of the CEQ guidance on May 28, 2025, is likely to discourage federal agencies from reviewing upstream and downstream greenhouse gas emissions.

On the other hand, the Court notes that renewable energy projects have themselves been delayed or stopped by NEPA challenges. If the infrastructure for renewable energy development is to move forward at a fast pace, obstacles such as the extensive time and resources required to prepare an EIS must be surmounted. The *Seven County* opinion may provide some of the relief that these renewable energy projects need.

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